

National Transportation Safety Board

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in the official record by regular, registered, or certified mail, has been returned as undelivered, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date is determined under § 821.7(a).

[59 FR 59047, Nov. 15, 1994]

§ 821.9 Intervention and amicus appearance.

(a) *Intervention.* Any person may move for leave to intervene in a proceeding and may become a party thereto, if it is found that such person may be bound by any order to be entered in the proceeding, or that such person has a property, financial, or other legitimate interest that will not be adequately represented by existing parties, and that such intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 10 days prior to hearing. The extent to which an intervenor may participate in the proceedings is within the law judge's discretion, and depends on the above criteria.

(b) *Amicus curiae briefs.* A brief of *amicus curiae* in matters on appeal from initial decisions may be filed if accompanied by written consent of all the parties, or if, in the opinion of the Board's General Counsel, the brief will not unduly broaden the matters at issue or unduly prejudice any party to the litigation. A brief may be conditionally filed with motion for leave. The motion shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Such brief and motion shall be filed within the time allowed the party whose position as to affirmance or reversal the brief would support, unless cause for late filing is shown, in which event the General Counsel may provide an opportunity for response as a condition of acceptance.

[59 FR 59047, Nov. 15, 1994]

§ 821.10 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice or order of the Board or a law

judge, or by any applicable statute, the date of the act, event, or default after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. Saturdays, Sundays, and legal holidays for the Board shall be computed in the calculation of time in all emergency cases under subpart I of this part and shall be counted in the computation of time in all nonemergency cases where the period of time involves 7 days or more.

[56 FR 56172, Nov. 1, 1991]

§ 821.11 Extension of time.

(a) Upon written request filed with the Board and served on all parties, or by oral request with any extension granted confirmed in writing and served on all parties, and for good cause shown, the chief judge, the law judge, or the Board may grant an extension of time to file any document except a petition for reconsideration.

(b) The Board's General Counsel is authorized to grant unopposed extensions on timely oral request without a showing of good cause in cases appealed to the Board from a decision of a law judge. Written confirmation of such a grant must promptly be sent by the requesting party to the Board and served on other parties.

(c) Extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances.

[59 FR 59047, Nov. 15, 1994]

§ 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend his pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment to an answerable pleading, the law judge shall allow the adverse party a reasonable time to object or answer.

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Amendments to complaints shall be consistent with the requirements of 49 U.S.C. 44709(c) and 44710(c).

(b) *Withdrawal.* Except in the case of withdrawal of an appeal to the Board, withdrawal of a petition for review, withdrawal of a complaint, or withdrawal of an appeal from an initial decision, a party may withdraw pleadings only on approval of a law judge or the Board.

[59 FR 59047, Nov. 15, 1994]

§ 821.13 Waivers.

Waivers of any rights provided by statute or regulation shall either be in writing, or by stipulation made at a hearing and entered into the record, and shall set forth their precise terms and conditions.

§ 821.14 Motions.

(a) *General.* An application to the Board or to a law judge for an order or ruling not otherwise provided for in this part shall be by motion. Prior to the assignment of a law judge, all motions shall be addressed to the chief law judge. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, or the certification of the record to the Board, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the Board, Office of General Counsel. All motions not specifically provided for in any other section of this part shall be made at an appropriate time, depending on the nature thereof and the relief requested.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the grounds for the relief sought, and the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the law judge directs otherwise.

(c) *Answers to motions.* Except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by such affidavits or other evidence as he desires to rely upon, provided that the answer is filed with 15 days after the motion has been served

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upon him, or such other period as the Board or a law judge may fix. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within such time as the law judge may fix.

(d) *Oral argument; briefs.* No oral argument will be heard on motions unless the Board or the law judge directs otherwise. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the positions taken.

(e) *Disposition of motions.* Except as provided in paragraph (c) of this section for rulings on motions made at a hearing, the law judge shall pass upon all motions properly addressed to him, unless he finds that a prompt decision by the Board is essential to the proper conduct of the proceeding, in which case he may refer such motion to the Board for decision.

(f) *Effect of pendency of motions.* Except as provided in §§ 821.17(a) and 821.18, the filing or pendency of a motion shall not automatically alter or extend the time fixed in this part (or any extension granted thereunder) to take action by the parties.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989; 59 FR 59047, Nov. 15, 1994]

§ 821.15 Motion to disqualify a Board Member.

A motion requesting a Board Member to disqualify himself shall be filed with the Board, supported by an affidavit setting forth grounds for disqualification. In nonemergency proceedings, where an appeal from an initial decision is filed, such motion shall be filed on or before the date on which the reply brief is due, pursuant to § 821.48(d). In emergency proceedings, where a notice of appeal has been filed, such motion shall be filed on or before the date the reply brief is due, pursuant to § 821.57(b). Failure to file a timely motion shall be deemed a waiver of any claim of disqualification. Application for leave to file an untimely motion may be made, accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could